

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

RYAN MICHAEL KALMBACK,

Defendant.

Case No. 2:20-CR-0162-TOR

STIPULATED PROTECTIVE
ORDER REGARDING COMPUTER
FORENSIC REVIEW PROCEDURES
FOR CHILD PORNOGRAPHY
CONTRABAND

BEFORE THE COURT is the parties' Stipulated Motion Regarding Computer Forensic Review Procedures for Child Pornography Contraband. ECF No. 17. The motion was submitted for consideration without oral argument. Having reviewed the file and records therein, the Court is fully informed.

Pursuant to the parties' stipulation and for good cause shown, the motion is granted.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. 18 U.S.C. § 3509(m) applies to this case, and the Court is required to deny defense requests to copy, photograph, duplicate, or otherwise reproduce material constituting child pornography if the government makes the material reasonably available to Defendant and provides an ample opportunity for the defense to examine it at a government facility. *See* 18 U.S.C. § 3509(m);

2. In order to comply with 18 U.S.C. § 3509(m), and to allow Defendant the greatest opportunity to prepare an effective defense in preparation for trial in this matter,

1 the government will make a true forensic, bit-by-bit E01 image of devices and media
2 containing alleged child pornography contraband at issue in the above-referenced case.
3 The government will make that forensic image reasonably available to Defendant and
4 provide ample opportunity for the defense team to examine it at a government facility in
5 Spokane, Washington. The parties may readdress the Court if there is a need for
6 additional or after-hours access during the course of litigation in the event trial or motion
7 hearings require additional forensic review;

8 3. The defense forensic examination will be conducted in an interview room
9 monitored by closed-circuit television (“CC-TV”), without audio feed. While the TV
10 with non-audio feed will ensure the integrity of FBI space and security of its occupants,
11 the video feed is not of sufficient detail or at an angle that would reveal defense strategy.
12 The government and its agents expressly agree that no attempt will be made to record
13 any audio from the workstation and that no attempt will be made to observe the defense
14 team’s work product or computer monitor screen at any time. The defense expert may
15 review the feed to ensure that defense strategy is not being compromised at any time
16 while conducting the forensic review;

17 4. The defense team¹ shall not make, nor permit to be made, any copies of the
18 alleged child pornography contraband pursuant to this Protective Order and shall not
19 remove any contraband images from the government facility. The defense expert will be
20 allowed to copy any file that is not contraband and compile a report (without contraband
21 images/videos) documenting the examination on removable media at the discretion of
22 the defense expert;

23 5. The designated defense expert, Jennifer McCann, will leave at the
24 _____


25 ¹ For purposes of this Protective Order, the term “defense team” refers solely to
26 Defendant’s counsel of record (“defense counsel”), Defendant’s designated expert
27 (“defense expert”), and a defense investigator.
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1 government facility any equipment, including hard drives, which contain child
2 pornography contraband that is identified during forensic evaluation. The parties may
3 readdress this matter with the Court upon notice that the defense intends to retain a
4 different defense expert;

5 6. For the purpose of trial, the government agrees to make available a digital
6 copy of any government trial exhibit that contains contraband, which will be kept in the
7 custody and control of the case agent. Upon reasonable notice by the defense, the case
8 agent will also maintain for trial digital copies of any proposed defense exhibit that
9 contains contraband. If the defense team intends to offer, publish, or otherwise utilize
10 any government or defense exhibit contained on the digital copy maintained by the case
11 agent during trial, the case agent shall assist the defense team in publishing or utilizing
12 the exhibit that contains contraband upon notification by the defense team.

13 IT IS SO ORDERED. The Clerk shall enter this Order and furnish copies to
14 counsel.

15 Dated December 14, 2020.

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18 THOMAS O. RICE
19 United States District Judge
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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Colin G. Prince.

s/ Alison L. Gregoire

Alison L. Gregoire

Assistant United States Attorney